

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
J. PERRY AND SYBIL N. YATES)

For Appellants: Michael L. Mellor
Attorney at Law

For Respondent: Crawford H. Thomas
Chief Counsel

James P. Corn
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of J. Perry and Sybil N. Yates against a proposed assessment of additional personal income tax in the amount of \$1,495 for the year 1967.

The question presented is whether the loss on a sale of improved real estate constituted a nondeductible personal loss or a deductible capital loss.

Early in 1965, Mrs. Sybil N. Yates entered a hospital for a hip operation. Appellants then owned and resided in a three-story residence in San Francisco. Subsequent to Mrs. Yates' entry into the hospital, appellant J. Perry Yates was advised by doctors that his wife would be on crutches for perhaps a year and unable to

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climb stairs beyond that time. Under the circumstances, the doctors said it would be necessary for them to move into a single-story residence. In March 1965, while Mrs. Yates was still hospitalized, Mr. Yates followed this advice and purchased a one-floor apartment for \$127,500. When Mrs. Yates was able to see the apartment she refused to live there. In September 1965, appellant purchased another residence. About the same time, the apartment was placed on the market and ultimately was sold in May 1967 for \$104,250. The apartment had remained vacant throughout appellant's ownership.

Appellants deducted the loss realized from the sale of the apartment on their 1967 joint California income tax return. Respondent disallowed the deduction as a nondeductible personal loss. Appellants protested this disallowance and respondent's action on the protest gave rise to this appeal.

Section 17206 of the Revenue and Taxation Code allows the deduction of nonbusiness losses if they are incurred in a transaction entered into for profit. (Appeals of Claude D. and Jessie V. Plum, Cal. St. Bd. of Equal., Nov. 19, 1958.) in deciding whether a particular transaction was entered into for profit, only the primary intention is relevant for the purpose of determining the deductibility or nondeductibility of the loss on the eventual sale of the property. (James E. Austin, 35 T.C. 221, aff'd, 298 F.2d 583.)

Appellants contend that their intention at the time of purchasing the apartment was twofold, that they wanted to purchase a residence and also to invest in property which could subsequently be sold at a profit. Respondent contends that appellants' primary motive in purchasing the apartment was the acquisition of an accessible residence. We agree with respondent.

The single-story apartment was purchased after doctors had advised appellant that Mrs. Yates would have limited mobility for an extended period of time. We think it is clear under these circumstances that the dominant motive in purchasing this property was the acquisition of a residence. In addition, there is no

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evidence to indicate a conversion of the apartment to rental or other income-producing purposes prior to its sale.

In view of the facts presented, we must sustain respondent's action.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of J. Perry and Sybil N. Yates against a proposed assessment of additional personal income tax in the amount of \$1,495 for the 'year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of February, 1973, by the State Board of Equalization..

William W. Bequest, Chairman
John W. Lynch, Member
John W. Lynch, Member
_____, Member
_____, Member

ATTEST: W. W. Bequest, Secretary